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IN THE

Supreme Court of the United States

October Term, 1972
No. 72-5518

J. BRYANT KASEY and MARYANN KASEY,

Petitioners,

vs.

MOLYBDENUM CORPORATION OF AMERICA, a corporation,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

RESPONDENT'S BRIEF IN OPPOSITION.

PETITION NOT PRINT
REPLY BRIEF NOT P

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Opinions Below.

The opinions of the District Court, reproduced in Appendix I to the petition, Items 1 and 6, are unreported. The opinion of the Court of Appeals, reproduced in Appendix I, Item 8, has not as yet been reported.

Jurisdiction.

In the court of first instance, jurisdiction was predicated upon diversity of citizenship between the plaintiffs and the defendant and the amount in controversy which exceeded $10,000.

The judgment of the Court of Appeals affirming the judgment of the District Court was entered on July 12, 1972 and an order denying appellants' position for rehearing was entered on August 17, 1972. The petition

herein was filed within ninety (90) days thereafter, invoking jurisdiction of this Court under 28 U.S.C. §1254 (1).

Questions Presented.

Certiorari is sought to review 17 questions propounded in the petition.

Questions numbered 1 through 8 were not in issue either in the District Court or before the Court of Appeals. All of such questions were decided by the California District of Appeal in actions tried in 1954 and 1956, in *Kasey v. Molybdenum Corporation of America,* 176 Cal.App.2d 357, 1 Cal.Rptr. 400 (1959), and *Kasey v. Molybdenum Corporation of America,* 176 Cal.App.2d 346, 1 Cal.Rptr. 393 (1959).

Questions 9 through 13 were not in issue in the District Court. They were initially urged by petitioners before the Court of Appeals.

Question 14 asks whether the Court of Appeals should have received evidence which was asserted to have been newly discovered.

Question 15 in effect challenges the District Court's denial of petitioners' motions to amend their complaint.

Questions 16 and 17 were introduced for the first time at the Court of Appeals' level.

Statement of the Case.

In the District Court:

The action was instituted in the District Court on August 8, 1959 for recovery of mining claims sold by the petitioners and their associate to the respondent, and also for an accounting and damages in consequence of alleged breaches of the parties' agreement of June 11, 1951.

Recovery of the properties was held to have been barred by the statute of limitations and a judgment to that effect under Fed. R. Civ. P. 54 (b) was affirmed in an exhaustive opinion. *Kasey v. Molybdenum Corporation of America*, 336 F.2d 560 (9th Cir. 1964).

In subsequent proceedings in the District Court, petitioners expressly declined to proceed on the accounting and damage issues but moved several times for leave to file a second amended complaint, all of which motions were denied by reason of (a) the statute of limitations, (b) previous final adjudications between the parties, (c) prior contractual and judicial admissions by the petitioners, (d) restatement of issues previously presented and (e) material prejudice to the respondent.

In the Court of Appeals:

In the judgment sought to be reviewed, the Court of Appeals

(1) affirmed the denial of leave to amend,

(2) refused to receive evidence on certain new issues, and

(3) declined to assume original jurisdiction to set aside prior state and federal court judgments which, following affirmance, had been final for many years.

The first such action was proper for the numerous reasons which motivated the District Court, hereinabove stated.

Refusal to take the other two actions was in full conformity with well established principles of appellate power and practice.

None of the other questions listed by petitioners was even presented to either of the Courts below. And all have been previously adjudicated between the parties.

REASONS FOR DENIAL OF THE WRIT.

The petitioners advance no reason for review on certiorari other than their dissatisfaction with the Court of Appeals' decision, asserted to be contrary "to the relevant statutory or case law as supported by the facts and evidence." (Petition, page 7, lines 3-7).

The case is not eligible for review on certiorari for these reasons:

1. The decision below presents no conflict with another Court of Appeals decision, or with an important area of state law or with a decision of this Court, and there is no representation in the petition concerning any such conflict.

2. There is no important question of federal law requiring illumination by this Court, and the petition does not attempt to delineate any such question.

3. Except for generalized charges of partiality, undue influence and collusion between courts and counsel (pages 4 and 7 of the petition), all made without a scintilla of supporting evidence, there is no suggestion of any departure from due propriety in the proceedings under attack. And there was no such departure.

Wherefore, respondent submits that the decision below is not appropriate for review by the Supreme Court of the United States and that the petition should be denied.

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